

A notice of system of records for Grievances, Appeals, and Disciplinary Action is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. In Appendix C to part 5, add a new paragraph 10 to the end of the Appendix to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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10. The Department of Homeland Security Grievances, Appeals, and Disciplinary Action system of records consists of electronic and paper records and will be used by DHS and its components. Grievances, Appeals, and Disciplinary Action is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Grievances, Appeals, and Disciplinary Action contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(f)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part

of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: October 7, 2008.

Hugo Teufel III,
Chief Privacy Officer, Department of
Homeland Security.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AMS–FV–08–0037; FV08–946–2 PR]

Irish Potatoes Grown in Washington; Modification of Late Payment and Interest Charge Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a modification of the late payment and interest charge regulation prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule would revise the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule would contribute to the efficient operation of the marketing order by reducing billing for nominal late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

DATES: Comments must be received by November 4, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Fax:* (202) 720-8938; or *Internet:* <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, *Telephone:* (503) 326-2724, *Fax:* (503) 326-7440, or *E-mail:* Teresa.Hutchinson@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 946, as amended (7 CFR part

946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on a modification of the late payment and interest charge regulation currently prescribed under the order. This rule would revise the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule would contribute to the efficient operation of the order by reducing the number of nominal billings for late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

The Washington potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the

Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate and the authority to recommend late payment charges or interest charges on late payment, are formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 946.41 of the order specifies that if handlers do not pay their assessments within the time prescribed by the Committee, the assessments may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the Committee with approval of USDA.

Section 946.141 of the order's administrative rules and regulations prescribes that the Committee shall impose a monthly interest charge of one percent of the unpaid balance on any handler who fails to pay his or her assessment within 30 days of the billing date. The interest charge regulation has been effective since May 25, 1995 (60 FR 27683). At that time, the Committee expressed difficulty with handlers that were continually late with their assessment payments and recommended the interest charge to be incurred 30 days after the billing date. It was believed that the charges were high enough to encourage timely payment and that this would be an effective means to ensure the Committee had adequate funds to administer the program.

The Committee unanimously recommended this rule during a video conference meeting held on April 16, 2008, followed by unanimous mail vote. The Committee has determined that most handlers pay their assessments within 60 days but there are a few that pay later than 60 days. The interest billing that occurs 30 days after the billing date has proven to be administratively cumbersome as the amounts billed are nominal amounts and many times the handler's payment is received shortly after the bill including interest is mailed.

As an example, the Committee's budget for the current fiscal year (2008-2009) is \$38,600 and estimated assessment income is \$35,000. Since there are approximately 43 handlers, the average each handler will pay in assessments is approximately \$814. Committee records indicate that for the most recent fiscal year, there were 316 invoices billed to handlers. The average amount on an invoice was \$110.44, with a high of \$626.54 and a low of \$0.18. Therefore, the interest amount owed on a payment that is 30 days late, but not

more than 60, would often be less than a dollar, rarely more than five dollars. Most handlers pay their assessments with 60 days. Only a few pay later than 60 days. The Committee believes that handlers that pay later than 60 days would be considered a greater risk for nonpayment than handlers who pay within 60 days.

The Committee recommended retaining § 946.141, but recommended modifying the regulation by providing an additional 30 days for handlers to pay. Committee records show that the great majority of handlers pay assessments within 60 days of the billing date. By waiting until 60 days past the billing date to charge interest on late assessment payments, the Committee would only have to charge interest to the few handlers who do not pay within 60 days. The Committee believes the interest charge applied after 60 days will continue to encourage handlers to pay promptly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Currently, there are approximately 43 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 267 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2006–2007 marketing year, 9,932,874 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market by 43 handlers, according to Committee data. The Committee reports that an industry consensus estimate of an average fresh potato f.o.b. price is \$8.45 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average f.o.b. price of \$8.45 yields a handler-

level fresh market crop value of \$83,932,785. Dividing \$83,932,785 by 43 handlers gives an average annual sales value per handler estimate of about \$1,951,949. The Committee estimates that 41, or about 95 percent of these 43 handlers, had annual receipts of less than \$6,500,000.

A comparable computation can be made to estimate annual average revenue per producer. Based on information provided by the National Agricultural Statistics Service, the 2006 season average producer price for Washington potatoes was \$6.25 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average producer price of \$6.25 provides a producer-level fresh market crop value of \$62,080,463. Dividing \$62,080,463 by 267 Washington potato producers yields an average annual fresh market sales value per producer of approximately \$232,511.

In view of the foregoing, it can be concluded that the majority of the Washington potato producers and handlers may be classified as small entities.

This proposal would change the date interest is charged on late assessment payments from 30 to 60 days past the billing date. This rule would contribute to the efficient operation of the marketing order by reducing billing for nominal late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

The authority for late payment and interest charges is provided in § 946.41 of the order. Section 946.141 of the order's administrative rules and regulations prescribes the amount of interest charged and when interest charges are imposed.

This proposed change is expected to reduce the cost to administer the order.

Regarding the impact of this rule on affected entities, modification of the late payment and interest charge regulation is expected to benefit handlers. Most handlers pay their assessments within 60 days of the billing date. Only a few handlers pay later than 60 days. Imposing the interest charge on late assessment payments at 60 days instead of 30 days past due will allow the committee to operate more efficiently by only billing after 60 days to handlers whose late payments are considered more serious and a greater risk. The benefits of this proposal are not expected to be disproportionately

greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not changing the date interest charges would be imposed and suspending the entire section. However, the Committee believes that it is important that interest charges be continued to encourage handlers to pay assessments in a timely manner. Further, the additional 30 days should allow adequate time to receive assessment payments by mail and allow the Committee to reduce administrative costs.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule relaxes requirements and would improve the operation of the marketing order. All written comments timely received will

be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is proposed to be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 946.141 is revised to read as follows:

§ 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within sixty (60) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 60 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

Dated: October 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–24918 Filed 10–17–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS–FV–08–0081; FV08–966–1 PR]

Tomatoes Grown In Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Florida Tomato Committee (Committee) for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-

pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 19, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375 Fax: (863) 325–8793, or E-mail: William.Pimental@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tomatoes beginning on August 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-pound carton of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.